

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

JOSE OCHOA-CALDERON,

Defendant.

Case No. 8:11cr40

FINDINGS AND RECOMMENDATION

This case is before the court on the defendant Jose Ochoa-Calderon's Motion to Dismiss (#[105](#)), wherein the defendant moves the court for an order dismissing his indictment pursuant to the Speedy Trial Act, 18 U.S.C. § 3161 et seq. The government filed a response (#[108](#)) and the defendant filed a reply brief (#[110](#)).

A review of the pleadings show that the facts are not disputed and I adopt the facts set out in the defendant's Memorandum Brief (#[106](#)). I also note that the law cited in the briefs of the parties fails to disclose any case with a similar factual pattern.

After review of 18 U.S.C. § 3161(c)(1) and § 3161(k)(1), I find, based upon the facts of this case, that because the defendant has not appeared in this district (the charging district) since his arrest on the bench warrant, that his speedy trial clock has not restarted. While this conclusion may seem in contradiction to normal speedy trial goals, I believe it reflects the clear wording of the statutes. Additionally, it should be noted that, the issue upon which the defendant bases the motion to dismiss was triggered by the defendant's failure to appear for his jury trial.

IT IS THE RECOMMENDATION to United States District Judge Joseph F. Bataillon that defendant's Motion to Dismiss ([#105](#)) should be denied.

Dated this 25th day of April 2012.

BY THE COURT:

S/ F.A. Gossett, III
United States Magistrate Judge

NOTICE

A party may object to the magistrate judge's findings and recommendations by filing a "Statement of Objections to Magistrate Judge's Findings and Recommendations" within 14 days of being served with the findings and recommendations. The objecting party must comply with all requirements of NeCrimR 59.2.